

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL DALTON,

Plaintiff,

-against-

BOREDOM THERAPY LLC,

Defendant.

X

:

:

:

:

:

:

:

:

:

:

:

:

X

Docket No. 1:18-cv-4735

ANSWER

Defendant, Boredom Therapy LLC (“Boredom” or “Defendant”), by its undersigned attorneys, alleges the following as its Answer to the Complaint of plaintiff Michael Dalton (“Dalton” or “Plaintiff”).

NATURE OF THE ACTION

1. Denies each and every allegation set forth in paragraph 1 of the Complaint.

JURISDICTION AND VENUE

2. Denies each and every allegation set forth in paragraph 2 of the Complaint.
3. Admitted.
4. Admitted.

PARTIES

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 5 of the Complaint.

6. Admitted, except denies that Boredom has a place of business at 349 Fifth Avenue, NY, NY 10016.

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 7 of the Complaint.

8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 8 of the Complaint.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 10 of the Complaint.

B. Defendant's Infringing Activities

11. Denies each and every allegation set forth in paragraph 11 of the Complaint except admits that Boredom ran the article entitled "Police Find Something Disturbing Inside A Hoarder's Home...But Did She Even Know It Was There?".

12. Denies each and every allegation set forth in paragraph 12 of the Complaint.

CLAIM FOR RELIEF **(COPYRIGHT INFRINGEMENT AGAINST BOREDOM)** **(17 U.S.C. §§ 106 and 501)**

13. Boredom repeats and alleges the allegations in paragraphs 1 through 12 of this Answer as if fully set forth herein.

14. Denies each and every allegation in paragraph 14 of the Complaint.

15. Denies each and every allegation in paragraph 15 of the Complaint.

16. Denies each and every allegation in paragraph 16 of the Complaint.

17. Denies each and every allegation in paragraph 17 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

18. The Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

19. Plaintiff's claims are barred, in whole or in part, by the doctrines of estoppel, waiver, laches and/or acquiescence.

THIRD AFFIRMATIVE DEFENSE

20. Plaintiff's purported copyright and/or copyright registration is invalid, void and/or unenforceable.

FOURTH AFFIRMATIVE DEFENSE

21. Plaintiff's claims are barred by the doctrine of fair use.

FIFTH AFFIRMATIVE DEFENSE

22. Plaintiff authorized, implicitly or explicitly, any use by Boredom of the subject photograph, and therefore Plaintiff's claims are barred by the doctrine of implied license.

SIXTH AFFIRMATIVE DEFENSE

23. Plaintiff's claims are barred to the extent that Plaintiff has forfeited or abandoned his subject purported intellectual property.

SEVENTH AFFIRMATIVE DEFENSE

24. Plaintiff's claims are barred by the doctrine of misuse of copyright.

EIGHTH AFFIRMATIVE DEFENSE

25. Plaintiff's claims are barred, in whole or in part, because Boredom's conduct was, at all times, in good faith and with non-willful intent.

NINTH AFFIRMATIVE DEFENSE

26. Plaintiff's claims are barred because the statutory damages sought are unconstitutionally excessive and disproportionate to any actual damages that may have been sustained in violation of the Due Process Clause.

TENTH AFFIRMATIVE DEFENSE

27. Plaintiff's claims are barred, in whole or in part, by Plaintiff's failure to mitigate his damages, if any.

ELEVENTH AFFIRMATIVE DEFENSE

28. Plaintiff's claims are barred, in whole or in part, because any damages allegedly suffered by Plaintiff were caused by persons other than Boredom or outside Boredom's control.

WHEREFORE, Defendant Boredom Therapy LLC respectfully requests that the Court enter judgment as follows:

- a. Dismissing Plaintiff's claim with prejudice;
- b. Awarding Boredom its attorneys' fees, expenses, and costs incurred with this action; and
- c. Awarding Boredom such other and further relief as the Court deems just and proper.

Dated: New York, New York
August 10, 2018

Respectfully Submitted,

SULLIVAN & WORCESTER LLP

By: /s/ Gerry Silver
Gerry Silver, Esq.
1633 Broadway
New York, NY 10019
(T) (212) 660-3096
(F) (212) 660-3001
gerry.silver@sandw.com

Attorneys for Defendant